THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13845 OF 2005

DATED: 16TH MARCH, 2006.

Between

Md. Ismail .. Petitioner

And

The A.P. State Wakf Board, rep. by its
Chief Executive Officer, Hyderabad,
And twelve others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13845 OF 2005

ORDER :

This writ petition is filed questioning the constitution of Managing Committee for Jama-e-Masjid comprising of respondents 3 to 13 under the proceedings dated 2-6-2005 issued by the first respondent – Andhra Pradesh State Wakf Board.

The case of the petitioner is that as per the bye-laws of the Jama-e-Masjid Jangaon, the Managing Committee shall consist of seven members and out of them four members shall be elected by secret ballot and the remaining three members shall be nominated by the District or Ward Committee. It is stated that in terms of the said bye-laws, the 2nd respondent issued Election Notification dated 28-1-2005 proposing to conduct elections on 14-2-2005. The petitioner and three others filed nominations for the post of President. Though elections were held on 14-2-2005, since several irregularities were committed, the petitioner filed objections before the first respondent. In pursuance thereof, the 1st respondent called for a report from the 2nd respondent – Inspector Auditor (Wakf). The 2nd respondent, having conducted the necessary enquiry, submitted a detailed report dated 16-3-2005 stating that there were no proper electoral rolls and minors had also voted and therefore recommended fresh elections. The first respondent, on the basis of the said report, issued a memo dated 15-4-2005 directing the 2nd respondent to conduct fresh elections to Jama-e-Masjid Jangaon as per the rules and to submit detailed report in the matter urgently.

However, without conducting any fresh elections, under the impugned proceedings dated 2-6-2005 a Managing Committee was constituted under Section 18 of the Wakf Act, 1995 (for short, 'the Act') for a period of two years based on the very same elections held on 14-2-2005. Aggrieved by the said action, this writ petition is filed.

In the counter-affidavit filed on behalf of the 1st respondent – Wakf Board it is stated that in the elections held on 14-2-2005, the third respondent was elected as the President and the Mandal Revenue Officer, Jangaon, by letter dated 21-2-2005 recommended for constitution of Managing Committee consisting of respondent No.3 as President and respondents 4 to 13 as Members, and accordingly the Committee was constituted under Section 18 of the Act. However, the fact that the elections were conduced on 14-2-2005 in terms of the bye-laws of the institution in question has not been disputed.

I have heard both sides and perused the material on record.

It is true that the 1st respondent, under Section 18 of the Wakf Act, is competent to constitute the Managing Committee. However, in the case on hand, admittedly, the 1st respondent conducted elections in terms of the bye-laws through secret ballot. Nothing has been placed before this Court to show that such election conducted on 14-2-2005 was confirmed by the Chairman of the Wakf Board as required under the bye-laws. On the other hand, the specific case of the petitioner is that on the basis of the report dated 16-3-2005 of the Inspector Auditor (Wakf), the Wakf Board directed re-election. The counter-affidavit filed by the Chief Executive Officer was silent about the said fact and merely reiterated that the Managing Committee was constituted under Section 18 of the Act with the members elected in the election held on 14-2-2005.

Having chosen to conduct elections in terms of the bye-laws, the Committee under Section 18 of the Act can be constituted only after the confirmation by the Chairman of the Wakf Board as amended under the bye-laws. Since nothing has been placed before this Court

to show that such confirmation was obtained and particularly since no explanation was forthcoming in the counter-affidavit as to the re-election directed to be conducted, the impugned proceedings dated 2-6-2005 constituting a Managing Committee under Section 18 of the Act are unsustainable.

Accordingly, the impugned proceedings are set aside and the Writ Petition is disposed of with a direction to the respondents 1 and 2 to constitute fresh Managing Committee to Jama-e-Masjid Jangaon following due process of law. No costs.

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G. ROHINI, J.

Dt. 16-3-2006
ghn